

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION

No. 4:14-CR-61-H

UNITED STATES OF AMERICA,

v.

EMMANUEL JEROME GARDNER,  
Defendant.

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**ORDER**

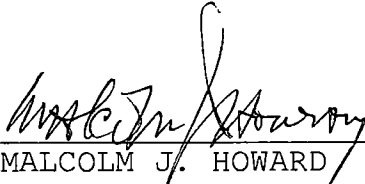
This matter is before the court on various motions filed by defendant. First, defendant filed a motion to sequester government witnesses to which the government does not object. For good cause shown, defendant's motion to sequester government witnesses [DE #142] is GRANTED.

Defendant also filed a motion to sever, or a motion for separate trials. The government has responded in opposition to this motion. As detailed in the government's memorandum in opposition, defendant fails to state grounds sufficient to justify severance of the trial of the counts in the superseding indictment. Joinder under Rule 8 of the Federal Rules of Criminal Procedure is proper in this matter, and defendant has failed to make more than a speculative argument regarding prejudice to justify severance under Rule 14 of the Federal Rules of Criminal Procedure. Therefore, the motion to sever [DE #143] is DENIED.

Defendant also filed a motion to dismiss the indictment for selective prosecution. The government has also responded in

opposition to this motion. The Attorney General and United States Attorneys enjoy "broad discretion" as to whom to prosecute and their prosecutorial decisions receive a "presumption of regularity." United States v. Hare, 2016 WL 1567051 at \*4 (4th Cir. April 1, 2016) (quoting United States v. Armstrong, 517 U.S. 456, 464 (1996)). To overcome the presumption of prosecutorial good faith, defendant must prove by clear evidence that the decision to prosecute had a discriminatory effect and was motivated by a discriminatory purpose. Armstrong, 517 U.S. at 465. Defendant has failed to meet this heavy burden. Absent some statistical data, he has completely failed to show discriminatory effect or purpose. For reasons more fully detailed in the government's memorandum, defendant's motion to dismiss based on selective prosecution [DE #148] is DENIED.

This 11<sup>th</sup> of May 2016.

  
MALCOLM J. HOWARD  
Senior United States District Judge

At Greenville, NC  
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